

MAMERTO GILLESANIA ET AL., PLAINTIFFS AND APPELLANTS, VS. NICOLAS MENASALVAS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4202. March 09, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 27th day of June, 1903, Graciano Fadrigon executed his last will and testament. On the 5th day of November, 1905, the said Fadrigon died. Later the said will was presented to the Court of First Instance of the Province of Antique for probate. The probate of the will was opposed by some of the relatives of the deceased. The opposition seems to be based upon two grounds:

First. That the witnesses who signed the will did not all sign in the presence of the testator and in the presence of each other as required by section 618 of the Code of Procedure in Civil Actions; and

Second. That the said testator was mentally incapable of making said will at the time the same was authorized and made.

In the month of November, 1906, the court heard the evidence pro and con offered upon the question whether the will should be admitted to probate or not. After hearing the evidence the lower court denied the probate of said will. From this decision of the lower court the petitioners appealed, assigning the following errors:

"1. In holding that the will of Graciano Fadrigon was not executed in accordance with the provisions of section 618 of the Code of Civil Procedure, because one of the witnesses did not see the other five sign, and because some witnesses made contradictory statements with respect to facts which could not be unknown to the others.

"2. In holding that, on account of the lack of education on the part of Graciano Fadrigon, it is not credible that he could dictate the provisions contained in the will wherein the situation, extension, and boundaries, are described, considering the size and number of said properties, without having before him the documents of ownership.

"3. In holding that the will executed by the late Graciano Fadrigon should not be admitted to probate."

With reference to the first above assignment of error, an examination of the will shows that it was signed by six witnesses. Said section 618 only requires that wills be signed by three persons, in the presence of the testator and in the presence of each other. An examination of the evidence shows that each of the six persons who signed the said will were examined as witnesses and it appears, beyond peradventure of doubt, that five of the six witnesses signed the said will at the request of the testator, in the presence of the testator and in the presence of each other. It is true that one of the witnesses, Mateo Mena, who was the first witness to sign the will, immediately left the room where the will was executed, and did not see the other witnesses sign the said will. We are of the opinion and so hold that, when three of all the witnesses who signed the will, signed at the request of the testator and in his presence and in the presence of each other, the requirements of the law were thereby complied with. The mere fact that there were six witnesses to the said will and that one of them did not see the others sign is not sufficient

to invalidate the said will when the other requirements of the law are satisfied.

With reference to the second above assignment of error, while the evidence is somewhat conflicting, yet all of the persons who signed the said will as witnesses, declared that the testator at the time of the execution of the said will was of sound mind and memory. There is no evidence to show that the witnesses to the will had any interest in the result of the will nor any motive in declaring other than the truth with reference to the questions presented to them.

Having arrived at the conclusion that the will was executed in due form, complying with the requirements of the law, and that the testator had full capacity to execute the said will, we must declare that the lower court committed an error in not admitting the said will to probate. The judgment or order of the lower court refusing to admit the said will to probate is hereby reversed, and it is hereby ordered that said cause be returned to the lower court with direction that an order be entered admitting said will to probate in accordance herewith. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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